

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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Th9b

Appeal filed:	9/5/02
Hearing opened:	10/9/02
49th day:	10/24/02
Substantial Issue found:	11/7/02
De Novo Continued:	2/6/03
Staff:	JB-SC
Staff report prepared:	4/17/03
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APPEAL STAFF REPORT DE NOVO HEARING

Application number.....A-3-SLO-02-074, Pelle SFD

Applicant.....Steve Pelle

Appellants.....Richard Hawley; Commissioners Wan and Desser.

Project location.....1609 Burton Drive (Lodge Hill), Cambria, San Luis Obispo County.

Project description.....Construction of a two-story 3,500 sq. ft. single-family residence with attached 900 sq. ft. garage, 350 sq. ft. sun porch, 595 sq. ft. guest house, and a 2,400 sq. ft. garage/workshop.

Local approval.....The San Luis Obispo County Planning Commission approved Minor Use Permit/Coastal Development Permit D000382P for the project on August 13, 2002.

File documents.....San Luis Obispo County certified Local Coastal Program; Final Local Action Notice 3-SLO-02-429; documents and materials from the local record provided by San Luis Obispo County on September 20, 2002; North Coast Area Plan Update 1998; Periodic Review of the San Luis Obispo County Certified Local Coastal Program 2001.

Staff recommendation...Approval with Conditions

Summary: On November 7, 2002, the Commission found that a substantial issue exists with respect to this project's conformance with the certified San Luis Obispo County Local Coastal Program (LCP) and took jurisdiction over the coastal development permit. At the February 6, 2003 Commission meeting in San Diego, the Applicant presented a modified project for consideration. The Applicant now proposes to construct a two-story 3,052 sq. ft. single-family residence with attached 896 square foot garage, 600 square foot guesthouse, and a 1,500 square foot garage/workshop. The *de novo* hearing was continued and the Commission directed staff to consult with the Applicant on the details of the modified project.

The Applicant's proposed project raises concerns regarding adequate public services. In order to find the project consistent with the LCP Public Works policies a finding must be made that there is sufficient water supply to serve the existing developed parcels in Cambria as well as the proposed project. In this case,



**California Coastal Commission
May 2003 Meeting in Monterey**

Staff: J.Bishop Approved by:

the County accepted the Intent-to-Serve letter issued by the Cambria Community Services District (CCSD) as evidence of adequate water supply. However, this allocation was made prior to the declaration of the current water shortage. The Commission has previously recognized the serious water supply situation in Cambria and uncertainty still exists with respect to the environmental sustainability of the community's water supply. Most importantly, the burden of the uncertainty in the existing water supply must not be placed on coastal resources. Given the significant outstanding questions regarding the adequacy of the water supply available to serve existing development, the approval of new development that will increase water demand is inconsistent with Public Works Policy 1.

In addition, the proposed project raises concerns regarding protection of environmentally sensitive habitat areas (ESHA). As approved by the County, the additional water needed to serve this development will require an increase in water withdrawals from Santa Rosa and San Simeon Creeks which has the potential to overdraft limited groundwater supplies, resulting in the disruption of sensitive riparian and wetland habitats inconsistent with LCP ESHA and Coastal Watershed Policies. Furthermore, issues are raised with respect to Agriculture Policy 7 and Recreation and Visitor Serving Facilities Policy 2, which give agriculture highest priority for water, consistent with the protection of aquatic habitats.

The proposed project also raises concerns regarding protection of Cambria's Monterey pine forest. The proposed development is located entirely within Monterey pine forest ESHA, and the entire site is mapped as a Terrestrial Habitat (TH) Sensitive Resource Area (SRA). Monterey pine forest in Cambria is considered an environmentally sensitive habitat area (ESHA) because it includes plant or animal life or their habitats, which are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. The project would result in direct and indirect impacts to terrestrial habitats (TH). The project and the cumulative impacts to Monterey pine forest habitats are considered significant and unavoidable.

In this case, the proposed new single-family dwelling and residential accessory structures are evaluated as new development entirely within an environmentally sensitive habitat area (ESHA). As proposed, impacts from residential use must be considered. The structures, grading, and paving proposed on the site are inconsistent with LCP Monterey pine forest protection policies because the entire site is considered to be environmentally sensitive habitat. Although non-resource dependent development in ESHA is not consistent with the policies of the LCP, some development of the site must be allowed in order to avoid a taking of the property without just compensation, as provided under the 5th Amendment of the US Constitution and Coastal Act Section 30010.

In light of constitutional takings issue associated with the proposed development, staff recommends the project be modified to maximize sensitive pine forest habitat protection consistent with private property rights. Therefore, staff recommends that the Commission **approve** the proposed development subject to a number of conditions in order to maximize consistency with the LCP. These conditions include the following requirements:



- Submittal of revised project plans showing a modified development envelope that allows a single-family development, but also maximizes protection of Monterey pine forest ESHA;
- Recordation of a voluntary lot merger of the four lots of the project site.
- Inclusion of a special retrofitting condition that would offset the additional water withdrawals caused by the project;
- Submittal of a tree replacement and planting plan;
- Inclusion of landscaping requirements;
- Submittal of a diseased material and tree removal plan;
- Submittal of Sedimentation, Erosion, and Drainage Control Plans;
- Placement of a deed restriction on all open space/habitat areas outside of development envelope;
- Implementation of specific measures to minimize temporary construction and cumulative impacts on pine forest plants and animals.

Although the entire lot is considered to be ESHA, to prevent a takings, some development of the parcel must be allowed. As conditioned, the project will maximize the protection of Monterey pine forest ESHA, and satisfy Constitutional issues. Therefore, as conditioned, Staff recommends approval.

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1. Staff Recommendation on Coastal Development

Permit

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development subject to the standard and special conditions below.

MOTION: *I move that the Commission approve Coastal Development Permit Number A-3-SLO-02-074 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL: Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit as conditioned and adoption of the following resolution and findings. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT: The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that although the development has been conditioned to bring it to the maximum extent possible into conformity with the provisions of the LCP, constitutional limitations on the CCC's regulatory authority preclude the achievement of full consistency with the LCP. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.



2. Conditions of Approval

A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Revised Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of Revised Project Plans to the Executive Director for review and approval. The Revised Project Plans shall be in substantial conformance with sheets 2 and A1 of the revised project plans submitted to the Commission titled *Proposed Residence for Steve Pelle* by Gary Swauger, dated April 2003 (See Exhibit F). The final project plan shall be consistent with the following requirements:
 - (a) **Workshop/Barn.** The workshop/barn shall not occupy an area greater than 1,000 square feet.
 - (b) **Driveway Improvements.** Final plans shall identify that the driveway will be constructed with pervious materials (e.g. decomposed granite), except in areas where the use of such materials would create erosion or drainage problems. In the event that the revised project plans include the use of impervious surfacing, the plans shall be accompanied by a specific explanation of why such materials are needed.
 - (c) **Site Runoff.** All site runoff shall be captured and filtered to remove typical runoff pollutants. Runoff from all surfaces subject to vehicular traffic shall be filtered through an engineered filtration system specifically designed to remove vehicular contaminants. All filtered runoff shall be directed offsite in such a manner as to avoid erosion and/or sedimentation.



(d) Lighting. There shall be no exterior night lighting, other than the minimum lighting necessary for pedestrian and vehicular safety purposes. All interior lighting within the residence shall be directed away from windows, which are visible from environmentally sensitive habitat areas. All lighting shall be downward directed and designed so that it does not produce any light or glares off-site.

The Permittee shall undertake development in accordance with the approved Revised Project Plans. Any proposed changes to the approved Revised Project Plans shall be reported to the Executive Director. No changes to the approved Revised Project Plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

2. No Net Increase in Water Use Allowed. PRIOR TO ISSUANCE OF THE PERMIT, the applicant shall submit, for Executive Director review and approval, evidence that the anticipated water use of this development has been completely offset through the retrofit of existing water fixtures within the Cambria Community Service District's service area or other verifiable action to reduce existing water use in the service area (e.g., replacement of irrigated landscaping with xeriscaping). The documentation submitted to the Executive Director shall include written evidence that the Cambria Community Service District (CCSD) has determined that the applicant has complied with CCSD Ordinance 1-98, as approved by the CCSD Board of Directors on January 26, 1998 (attached as Exhibit 6), and further modified by CCSD Board approval on November 14, 2002 (CCSD board item VIII.B attached as Exhibit 7), subject to the limitation that no retrofit credits shall have been obtained by any of the following means: a) extinguishing agricultural water use, or b) funding leak detection programs. Evidence of compliance with CCSD Ordinance 1-98 shall be accompanied by written confirmation from the CCSD that any in-lieu fees collected from the applicant have been used to implement projects that have reduced existing water use within the service area in an amount equal or greater to the anticipated water use of the project.

3. Tree Replacement. PRIOR TO CONSTRUCTION, the Applicant shall also provide evidence that special conditions related to tree planting and revegetation imposed by the County of San Luis Obispo have been implemented in accordance with the local approval D000382P (County Conditions # 5, 6, 7, 9, 10, 11, and 12,). See Exhibit C for a complete text of these conditions.

Pine trees shall be replaced at a 2:1 ratio. Coast live oak trees shall be replaced at a 4:1 ratio. Pine trees within 10 feet of disturbance shall be replaced at a 1:1 ratio. Coast live oak trees within 10 feet of disturbance shall be replaced at a 2:1 ratio. Monterey pine replacement trees shall be one-gallon saplings grown from the Cambrian stand *Pinus radiata macrocarpa*. Replacement Coast live oak trees shall also be at least one-gallon container size.

4. Landscape Material. No invasive trees or shrubs shall be planted. California Exotic Pest Plant Control lists should be consulted prior to any landscape installations, and no plant classified as an exotic plant shall be installed. Landscape material shall be consistent with the Monterey Pine Forest habitat. Some recommended plants are listed below (not a comprehensive list). Vegetation planted



within the driplines of remaining trees should not require irrigation. Rye grass should not be included in any seed mix due to its invasive nature.

Scientific Name

Common Name

Trees

Pinus radiata

Monterey Pine¹

Quercus agrifolia

Coast Live Oak

Understory Plants

Achillea millefolium

Yarrow

Arctosaphylos spp.

Manzanita²

Ceanothus spp.

Mountain lilac²

Clematis lasiantha

Virgin's bower

Heteromeles arbutifolia

Toyon

Ribes spp.

Currants and Gooseberries

Symphoricarpos mollis

Snowberry

¹ Use only those seedlings shown to be resistant to pitch canker disease

² Only those species found within Cambria should be used

All open areas of the site disturbed by project construction shall be replanted with native, drought and fire resistant species that are compatible with the habitat values of the surrounding forest. In addition, non-native, invasive, and water intensive (e.g. turf grass) landscaping shall be prohibited on the entire site.

5. Diseased Material. To prevent or reduce the spread of disease from pitch canker, bark beetles, or other diseases affecting the forest, the following measures shall be followed:

a. Cutting or pruning tools shall be cleaned with a disinfectant prior to using them on uninfected branches or other trees.

b. Prior to the cutting or removal of infected trees, the Permittee shall submit a plan, for review and approval by the Executive Director, for the transportation and relocation of the diseased material. The plan shall identify the chosen site to which the material will be relocated (areas free of the disease are prohibited) and shall ensure that any material taken off site will be covered or enclosed to avoid dispersal of contaminated bark beetles.

c. Trees removed as a result of development shall be cut into small logs and tree parts (small branches, twigs). If the material cannot be properly disposed of directly after cutting, it shall be stored on-site, under a clear plastic tarp. Tree parts shall be chipped, and left as a thin layer on-site. Small logs shall be stored on-site, under a clear plastic tarp, until necessary preparations have been made for their removal.



6. **Drainage, Erosion, and Sedimentation Control.** PRIOR TO ANY SITE DISTURBANCE, the Applicant shall submit, for Executive Director review and approval, Drainage, Erosion, and Sediment Control Plans that comply with County Condition of Approvals # 17, 18, and 19 (see Exhibit C for a complete text of these conditions), and that incorporate the following provisions:

Implementation of Best Management Practices During Construction. The Drainage and Erosion Control Plans shall identify the type and location of the measures that will be implemented during construction to prevent erosion, sedimentation, and the discharge of pollutants during construction. These measures shall be selected and designed in accordance with the California Storm Water Best Management Practices Handbook and the criteria established by the San Luis Obispo County Resource Conservation District. Among these measures, the plans shall limit the extent of land disturbance to the minimum amount necessary to construct the project; designate areas for the staging of construction equipment and materials, including receptacles and temporary stockpiles of graded materials, which shall be covered on a daily basis; provide for the installation of silt fences, temporary detention basins, and/or other controls to intercept, filter, and remove sediments contained in the runoff from construction, staging, and storage/stockpile areas; and provide for the hydro seeding of disturbed areas immediately upon conclusion of construction activities in that area. The plans shall also incorporate good construction housekeeping measures, including the use of dry cleanup measures whenever possible; collecting and filtering cleanup water when dry cleanup methods are not feasible; cleaning and refueling construction equipment at designated off site maintenance areas; and the immediate clean-up of any leaks or spills.

The plans shall indicate that PRIOR TO THE COMMENCEMENT OF GRADING, the applicant shall delineate that the approved construction areas with fencing and markers to prevent land-disturbing activities from taking place outside of these areas.

Post Construction Drainage. The drainage plan shall identify the specific type, design, and location of all drainage infrastructure and Best Management Practices (BMPs) necessary to ensure that post construction drainage from the project, including runoff from the roof, driveway and other impervious surfaces, does not result in erosion, sedimentation, or the degradation of coastal water quality. The capacity of drainage features and BMPs shall be adequate to treat, infiltrate or filter the amount of storm water runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs. In areas where rocks or other energy dissipation structure may be needed, they shall be located outside of sensitive habitat areas and natural drainage corridors to the maximum extent feasible, and shall be limited in size and footprint to the minimum necessary to achieve effective erosion control.

The applicant shall be responsible for implementing and maintaining drainage, erosion, and sedimentation control measures and facilities for the life of the project. This shall include performing annual inspections, and conducting all necessary clean-outs, immediately prior to the rainy season (beginning October 15), and as otherwise necessary to maintain the proper functioning of the approved system.



The Permittee shall undertake development in accordance with the approved Plans. Any proposed changes to the approved Plans shall be reported to the Executive Director. No changes to the approved Plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

7. Open Space Restriction.

- A. No development, as defined in section 30106 of the Coastal Act shall occur in the Open Space Area as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive director issues for this permit except for:
 - 1. Revegetation activities conducted in accordance with the approve Revegetation Plan prepared for the subject property as required by Special Conditions #3, 4, and 5.
 - 2. Fuel modification. Fuel modification may be conducted to the minimum extent necessary to meet Cambria Fire Department requirements. Only flammable understory and low-lying tree branches shall be removed. No trees shall be removed for fuel modification purposes.
- B. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI OF THIS PERMIT, the Applicant shall submit for review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described and shown on Exhibit F attached to this staff report.

- 8. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the “Standard and Special Conditions”); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant’s entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

- 9. Lot Merger.** PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicant shall record a voluntary lot merger for parcels 024-202-014, 024-202-023, 024-202-024, and 013-141-002. Evidence that the lot merger is complete shall be sent to the Executive Director of the Coastal Commission for verification.

- 10. County Conditions.** Except for Conditions 1, 2, 4, 8, 13, 14, and 20, all conditions of San Luis Obispo County’s approval of the Project become conditions of this permit. All conditions of San Luis



Obispo County's approval pursuant to planning authority other than the Coastal Act continue to apply.

Recommended Findings and Declarations

The Commission finds and declares as follows:

3. Project Procedural History

The appealed project was approved by a 4-0 vote (Chairperson Absent) of the San Luis Obispo County Board of Supervisors on August 13, 2002. Commissioners Sara Wan and Christina Desser, and Richard Hawley separately appealed this Board approval to the Coastal Commission. On October 9, 2002, the Coastal Commission opened the substantial issue hearing, and continued the hearing until such time as a full staff report analysis of the project would be possible. On November 7, 2002 in San Diego, the Commission resumed the substantial issue hearing on the project and found that the appeals raised substantial issues in terms of the project's consistency with the San Luis Obispo County LCP. As a result, the Commission took jurisdiction over the coastal development permit (CDP) for the project. On February 6, 2003, at the Coastal Commission meeting in San Diego, the de novo hearing was continued to allow staff to work with the Applicant on the details of a modified project.

4. Project Description

A. Project Location

The project is located at 1609 Burton Drive (Lodge Hill) in the community of Cambria, San Luis Obispo County. Lodge Hill is an extensive residential area located within the Monterey Pine forest terrestrial habitat, west of Highway One (See Exhibit 1). The topography of the area is varied with numerous ridges and gullies, steep slopes, and nearly flat areas near the marine terrace. The majority of the lots in the area are very small, typically 25 feet by 70 feet, and therefore historic development has been relatively dense. However, it is common for present-day proposals to consolidate two or three lots to create larger sites more appropriate for development.

In contrast to the typically small lots of Lodge Hill, the project site contains three double lots fronting a larger 4.5-acre parcel. Combined, these four lots represent a roughly rectangular 4.7-acre parcel located west of Highway One. The site is designated Residential Suburban in the San Luis Obispo Local Coastal Program. Combining Designations include Terrestrial Habitat, Geologic Study Area, and Sensitive Resource Area. In this particular area of Lodge Hill, several larger parcels exist to the south and west, within a relatively dense and pristine portion of the Monterey pine forest. The topography of the subject parcel is moderate to steeply sloping with some gently sloping areas along the northern property boundary. The parcel map provided in the Geologic Hazard Assessment report shows topographic contours from a



USGS map of the area. The property slopes towards the south-southeast from a high point of about 390 feet to a low point of about 340 feet. According to the project geologist, slopes as much as 10 degrees were observed during site visits.

The property contains a mixed high quality, dense Monterey pine and coast live oak forest with trees in all life stages. This large parcel is adjacent to a riparian stream corridor and contiguous with a large tract of remaining undeveloped Monterey pine forest south of the property. Recently, areas of Monterey pine forest habitat (approximately 15.8 acres) bordering the southern property boundary have been purchased for the purpose of open space preservation. The floodplain for the stream that drains the property lies to the southeast of the property and well below the lowest elevation of the property. This undisturbed area is commonly referred to as the “Strawberry Canyon” watershed.

See Exhibit A for general project location and site environs.

B. Description of Proposed Project

The revised project consists of a two-story, 3,052 square foot single-family residence with attached 896 square foot garage, 600 square foot guesthouse, and a 1,500 sq. ft. barn/workshop. The Applicant has modified the site plan to include two additional fronting parcels totaling 7,000 square feet. The entire site with all lots combined total 4.7 acres (205,134 sq. ft.) As currently proposed, development will disturb approximately 12,458 square feet (6%) of the site.

The Applicant also proposes to pave the approximately 10-foot wide dirt access road that exists onsite. The revised 12 foot wide driveway would be graded and paved, extending approximately 140 feet, at a slope of 19% from the existing access road (Burton Drive) on the southeast property corner. The home site includes a residence, guesthouse, and barn/workshop, clustered around a central paved turnaround. An estimated 11,050 cubic yards of cut grading would be required to accommodate the homesite and road improvements. The revised site plan is attached as Exhibit F.

5. Coastal Development Permit Determination

The standard of review for this CDP determination is the San Luis Obispo County LCP.

A. Public Services

1. Applicable Policies

As required by Public Works Policy 1, all new development must demonstrate that there is sufficient water supply to serve the development:

Public Works Policy 1: Availability of Service Capacity



New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development. Priority shall be given to infilling within existing subdivided areas. Prior to permitting all new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable...

This policy is implemented by CZLUO 23.04.430:

CZLUO Section 23.04.430 - Availability of Water Supply and Sewage Disposal Services.

A land use permit for new development that requires water or disposal of sewage shall not be approved unless the applicable approval body determines that there is adequate water and sewage disposal capacity available to serve the proposed development, as provided by this section . . .

In addition to these urban service policies, water supply for new development in Cambria must also be considered in light of LCP priorities for Agriculture and Visitor-serving development.

Agriculture Policy 7: Water Supplies

Water extractions consistent with habitat protection requirements shall give highest priority to preserving available supplies for existing or expanded agricultural uses. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

Recreation & Visitor-Serving Facilities Policy 2: Priority for Visitor-Serving Facilities. *Recreational development and commercial visitor-serving facilities shall have priority over non-coastal dependent use, but not over agriculture or coastal dependent industry in accordance with PRC 30222. All uses shall be consistent with protection of significant coastal resources... [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

Finally, The North Coast Area Plan component of the LCP contains a development standard for the Cambria Urban Area that requires:

Reservation of Service Capacity. *To allow for continued growth of visitor-serving facilities, 20% of the water and sewer capacity shall be reserved for visitor-serving and commercial uses.*

2. County-Approved Project

The staff report indicates that water is to be provided by Cambria Community Service District (CCSD), which extracts underflow (shallow groundwater) from both Santa Rosa and San Simeon Creeks. The County made no specific findings with regard to water availability, but rather, states that the CCSD's



intent-to-serve letter is the document attesting to the District's capabilities. The County accepted this intent-to-serve letter as evidence of adequate water and sewer service capacity to serve the proposed project.

3. Consistency with Applicable LCP Policies

Since passage of the Coastal Act, the Commission has recognized that Cambria's limited water supplies place a serious constraint on the buildout of this community. Concerns regarding the adequacy and reliability of Cambria's water supplies have been coupled with concerns that excessive withdrawals from San Simeon and Santa Rosa creeks will have significant adverse impacts on environmentally sensitive habitat areas. These concerns are detailed in the Commission's review of the North Coast Area Plan Update proposed by the County in 1997, and in the Periodic Review of the San Luis Obispo County LCP adopted by the Commission in July 2001 (available for review in project file). This analysis is incorporated by reference into these findings.

Recent events have reaffirmed the tenuous situation of Cambria's water supply. On October 25, 2001 the CCSO Board of Directors considered whether to pursue the declaration of a water shortage emergency. At that meeting, the Board of Directors determined that sufficient evidence existed to consider the declaration of a water shortage emergency based on an inability to accommodate the anticipated growth of the community in the near future. At this same meeting the Board voted to approve thirty-eight (38) intent-to-serve letters (one of which is the subject of appeal).

On November 15, 2001 the CCSO Board of Directors declared a water emergency. Part of this action included not allowing any additional intent-to-serve letters to be issued (i.e. anything beyond those that were issued during the October 25, 2001 meeting). The following list includes additional actions adopted by the CCSO to accompany the declaration of a water emergency:

- Reactivate the retro-fit program as contained in the CCSO Ordinances 1-98, 2-98, and 2-99;
- Investigate additional opportunities to implement water saving measures through the retro-fit program;
- Enforce Ordinance 4-2000 (water waste provision);
- Identify any additional opportunities to improve Ordinance 4-2000;
- Request that the County of San Luis Obispo adopt restrictions on the installation of landscaping within the Cambria CSD to minimize the impact or irrigation on water supplies;
- Develop a plan to ensure the enforcement of all restrictions and regulations regarding water usage in Cambria;
- Pursue the development of water master plan;
- Evaluate the current rate structure and develop changes and improvements.



Through the declaration of a moratorium on new water connections, the CCSD has taken a critical step in curbing short-term development potential in Cambria. Since October 25, 2001 no new intent-to-serve letters have been issued by the CCSD. This action, in turn, has generally limited County approval of coastal development permits in Cambria to those projects that obtained a commitment of water services prior to November 15, 2002.

As of August 21, 2002, the CCSD has indicated that there were a number of “intent-to-serve” letters currently outstanding from the CCSD that have yet to complete the County permit process. These outstanding commitments include both residential and commercial development totaling 102 “Equivalent Dwelling Units” (EDU’s), or, according to CCSD calculation, approximately 9,000 gallons of water per day. The total average current daily water production by the CCSD equals 720,000 gallons of water. Accordingly, based on CCSD’s figures, the water use attributable to these outstanding intent-to-serve letters represent an approximate 1.25% increase in total water supplies needed to serve these outstanding commitments.

In addition to outstanding intent-to-serve letters, there are an additional 45.7 inactive “grandfathered” EDU allocations, 13 single-family active meters in place, but not activated, and 27 connection permits that are being issued for recently processed building permits. Thus, the potential increase in water use associated with the full range of “pipeline projects” appears to be significantly greater than the 9,000 gallons per day estimated above.

In terms of this coastal development permit analysis, the cumulative increase in water use associated with pipeline projects, and the significant outstanding concerns regarding the adequacy of water supplies raise issues regarding compliance with LCP Public Works Policy 1, which requires that:

prior to permitting all new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed

Contrary to this Policy, and as described above, it is unclear that there is adequate water available to serve both the proposed development and other outstanding commitments, and at the same time comply with LCP standards protecting ESHA. Accordingly, new development that will place additional demands on Cambria’s limited water supplies cannot be approved consistent with the requirements of LCP Public Works Policy 1.

Nonetheless, there is an interim approach for those projects deemed “in the pipeline ” that would allow these projects to move forward in the development process without creating additional water withdrawals. The approach involves the existing retrofit program of the CCSD, described below. Through the retrofit program, the replacement of old plumbing fixtures with lower use modern ones would allow Cambria’s finite water supply to be stretched. By doing so, existing water supplies are used more efficiently, resulting in water savings that can be used for the new “pipeline projects.” To implement this approach, the conditions of this permit allow the proposed development to be constructed only if its anticipated water use is completely offset through the implementation of verifiable water conserving actions, such as by replacing existing water fixtures with water conserving fixtures, and/or replacing



irrigated landscapes with landscaping that requires little to no water.

Regardless of how the water savings is achieved (e.g. by actual retrofitting or retirement of existing water use), it is important to note that the success of this condition is limited by the finite number of non-retrofitted homes, businesses, and other un-retrofitted facilities remaining in the community; there must be an adequate amount of water saving opportunities available to offset the additional water use attributable to the pipeline projects. According to the CCSO there are adequate water savings opportunities currently available to achieve this objective.

It is also important to note that the CCSO already has a retrofit program in place, which allows property owners to purchase retrofit “points”. The CCSO banks these funds for future use towards water conservation projects. This approach, though, does not provide adequate guarantees that retrofits will be completed in a timely fashion, or adequately compensate for the additional water use attributable to the proposed development. Therefore, the conditions of this permit specify that the water conserving actions required to offset the increase in water demand associated with the pipeline projects must be completed before the coastal development permit is issued. The terms of this condition also call for the CCSO to participate in reviewing the adequacy of the proposed water savings actions, and in ensuring that the necessary water saving actions are effectively implemented and maintained.

In addition to Public Works Policy 1, water supply for new development in Cambria must also be considered in light of LCP priorities for Agriculture and Visitor-serving development. In this situation, however, it does not appear that these priority use policies are relevant because there is no reserve capacity currently available. Only in the event that there was available capacity (which there is not), at least 20% would need to be reserved for visitor-serving and commercial uses.

4. Public Services Conclusion and Project Modification

By prohibiting a net increase in water use (see Special Condition 2), the project will not result in additional withdrawals and will thereby avoid adverse impacts to coastal resources. Only with this condition can the Commission approve the project consistent with the Public Works policies of the LCP, on the basis that the project will not place any new demands on public water supplies.

B. Environmentally Sensitive Habitat Areas

1. Applicable Policies

Policy 1: Land Uses Within or Adjacent to Environmentally Sensitive Habitats

New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resources shall be allowed in the area [THIS POLICY SHALL BE IMPLEMENTED PUSUANT TO SECTIONS 23.07.170-178 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]

Policy 2: Permit Requirement



As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of the habitat. This shall include an evaluation of the site prepared by a qualified professional which provides: a) the maximum feasible mitigation measures (where appropriate), and b) a program for monitoring and evaluating the effectiveness of mitigation measures where appropriate. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE CZLUO].

Policy 5: Protection of Environmentally Sensitive Habitats

Coastal wetlands are recognized as environmentally sensitive habitat areas. The natural ecological functioning and productivity of wetlands and estuaries shall be protected, preserved and where feasible, restored. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE CZLUO].

Policy 18: Coastal Streams and Riparian Vegetation

Coastal streams and adjoining riparian vegetation are environmentally sensitive habitat areas and the natural hydrological system and ecological function of coastal streams shall be protected and preserved. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.07.174.]

Policy 21: County and State Review of Coastal Stream Projects

The State Water Resources Control Board and the county shall ensure that the beneficial use of coastal stream waters is protected, for projects over which it has jurisdiction. For projects which do not fall under the review of the State Water Resources Control Board, the county (in its review of public works and stream alteration) shall ensure that the quantity and quality surface water discharge from streams and rivers shall be maintained at levels necessary to sustain the functional capacity of streams, wetlands, estuaries and lakes. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.07.174 OF THE CZLUO].

Policy 27: Protection of Terrestrial Habitats

Designated plant and wildlife habitats are environmentally sensitive habitat areas and emphasis for protection should be placed on the entire ecological community. Only uses dependent on the resource shall be permitted within the identified sensitive habitat portion of the site.

Development adjacent to environmentally sensitive habitat areas and holdings of the State Department of Parks and Recreation shall be sited and designed to prevent impacts that would significantly degrade such areas and shall be compatible with the continuance of such habitat areas.

Policy 28: Protection of Native Vegetation

Native Trees and plant cover shall be protected wherever possible.

Policy 33: Protection of Vegetation



Vegetation which is rare or endangered or serves as cover for endangered wildlife shall be protected against any significant disruption of habitat values. All development shall be designed to disturb the minimum amount possible of wildlife or plant habitat.

Other applicable standards include Policies 1 and 2 for Watersheds:

Policy 1: Preservation of Groundwater Basin

The long-term integrity of groundwater basins within the coastal zone shall be protected. The safe yield of the groundwater basin, including return and retained water, shall not be exceeded except as part of a conjunctive use or resource management program which assures that the biological productivity of aquatic habitats are not significantly adversely impacted. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

Policy 2: Water Extractions

Extractions, impoundments and other water resource developments shall obtain all necessary county and/or state permits. All pertinent information on these uses (including water conservation opportunities and impacts on in-stream beneficial uses) will be incorporated into the database for the Resource Management System and shall be supplemented by all available private and public water resources studies available. Groundwater levels and surface flows shall be maintained to ensure that the quality of coastal waters, wetlands and streams is sufficient to provide for the optimum populations of marine organisms, and for the protection of human health. (Public works projects are discussed separately.) [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]



In addition, the following portions of CZLUO ordinances are applicable to the proposed project:

Section 23.07.164 – SRA Permit and Processing Requirements

....(e) Required Findings: Any land use permit application within a Sensitive Resource Area shall be approved only where the Review Authority can make the following required findings:

- (1) The development will not create significant adverse effects on the natural features of the site or vicinity that were the basis for the Sensitive Resource Area designation, and will preserve and protect such features through the site design.
- (2) Natural features and topography have been considered in the design and siting of all proposed physical improvements.
- (3) Any proposed clearing of topsoil, trees, or other features is the minimum necessary to achieve safe and convenient access and siting of proposed structures, and will not create significant adverse effects on the identified sensitive resource.
- (4) The soil and subsoil conditions are suitable for any proposed excavation; site preparation and drainage improvements have been designed to prevent soil erosion, and sedimentation of streams through undue surface runoff.

Section 23.07.170 – Environmentally Sensitive Habitats

... (b) Required findings: Approval of a land use permit for a project within or adjacent to an Environmentally Sensitive Habitat shall not occur unless the applicable review body first finds that:

- (1) There will be no significant negative impact on the identified sensitive habitat and the proposed use will be consistent with the biological continuance of the habitat.
- (2) The proposed use will not significantly disrupt the habitat.

... (d) Development standards for environmentally sensitive habitats:

- (1) New development within or adjacent to the habitat shall not significantly disrupt the resource.
- (2) New development within the habitat shall be limited to those uses that are dependent upon the resource.
- (3) Where feasible, damaged habitats shall be restored as a condition of development approval.
- (4) Development shall be consistent with the biological continuance of the habitat.

Section 23.07.176 – Terrestrial Habitat Protection

Vegetation that is rare or endangered, or that serve as habitat for rare or endangered species shall be protected. Development shall be sited and designed to minimize disruption of the habitat.



Finally, the following portions of CZLUO ordinances related to residential accessory structures are applicable to the proposed project:

Section 23.08.032(c) – Garages: *A detached accessory garage shall not occupy more than 1,000 square feet in area per dwelling, unless authorized by Minor Use Permit.*

Section 23.98.032(e) – Guesthouses: *A guesthouse shall not be located more than 50 feet from the principal residence or as otherwise approved through the Minor Use Permit.*

Section 23.08.032(g) – Workshops or studios: *A workshop is not to occupy an area greater than 40 percent of the floor area of the principal structure.*

2. County-Approved Project

San Luis Obispo County approved the subject development subject to 20 conditions. Based on the site plan submitted by the applicant, the home is sited on the north side of the proposed driveway and centered approximately 220 feet from the eastern property boundary. The approved driveway follows an existing road cut along the southern property boundary before angling north towards the center of the parcel. A central turn-around driveway pad is shown on the approved plans to the north of the improved driveway with the home, guesthouse, and garage/workshop assembled around it.

The applicant submitted a Preliminary Biological Assessment (Althouse and Meade, Inc; October 2000) with an addendum (September 2001). In summary, the biologist found that the entire property contains a high quality, dense Monterey pine and coast live oak mixed forest with individuals in all life stages. Monterey pine (*Pinus radiata*) is a federally listed species of concern and is on the California Native Plant Society List 1B (i.e., “plants Rare, threatened, or Endangered in California and elsewhere”). Native Monterey pine is defined by the LCP as Terrestrial Habitat ESHA. According to a search of the CNDDDB (not including Monterey pine), three rare plant species were listed from the Cambria area. These include: Cambria morning glory, Compact cobwebby thistle, and Chorro Creek bog thistle. According to the project biologist, it is unlikely that these species will occur on the property. It should be noted that many plant species were not identifiable during the survey conducted August 2000. The project biologist recommends that a spring survey should be conducted to search for rare species.

According to the biological assessment, suitable habitat exists on or near the property for rare and sensitive animal species. Individual specimens have not been identified on the site. However, the project biologist does recommend that prior to any site disturbance a survey for nesting sites should be conducted to determine if work will impact special status raptor species (i.e., Cooper’s hawk, prairie falcon, and American peregrine falcon).

The County staff report indicates that the proposed development has been modified many times in an attempt to limit tree removal and fragmentation of the sensitive forest. The original proposal was for a lot line adjustment creating scattered building sites throughout the project site. The County did not support this plan and determined that impacts to the forest were significant and could not be mitigated. A second project redesign limited development to the front two-thirds of the subject parcel. A third proposal limited development to the front half (1/2) of the subject parcel. However, the siting of structures in this plan spread development across the entire width of the property, resulting in fragmentation of the forest



and significant removal of sensitive habitat. The project was again modified to address forest fragmentation by limiting development to the front half of the parcel (approximately 220 feet west of Burton Drive and nearer to the neighboring residence), and locate all of the buildings to the north side of the proposed driveway. The County approved site plan leaves approximately 2.15 acres to the west in open space.

The County conditioned its approval to require mitigation for the removal and disturbance of 42 healthy Monterey pine having 8-inch+ diameter and 58 healthy coast live oak trees having a 6-inch+ diameter. The total tree replacement required for the project is 69 Monterey pines and 190 Coast live oaks. The County also conditioned its approval to require submittal of a Sedimentation and Erosion Control Plan, prepared and signed by a Registered Civil Engineer, that address both temporary and long-term sedimentation and erosion control measures.

See Exhibit C for County conditions.

3. Consistency with Applicable LCP Policies

Streams and Riparian Habitat

Increased water withdrawals needed to serve the project may significantly disrupt environmentally sensitive habitat areas inconsistent with the protection afforded this resource by the LCP. Inconsistent with ESHA Policies 1, 2, 5, 18 and 21, as well as Coastal Watershed Policies 1 and 2, the amount of water needed to support existing and future development in Cambria may adversely impact sensitive instream, riparian, and wetland habitats supporting rare and important species such as Steelhead trout, Tidewater Goby, Southwestern pond turtle, and California Red Legged Frog.

A. Steelhead Streams

The Cambria Community Services District's water is supplied from wells that extract the underflow of San Simeon and Santa Rosa Creeks. Both creeks are known to support steelhead trout. The California Department of Fish and Game lists these creeks as important steelhead habitats. However, as discussed in the Public Works Findings, and inconsistent with ESHA and Watershed Policies, the anticipated levels of water withdrawal from both urban and agricultural users may deplete surface and groundwater flows needed for healthy steelhead spawning habitat. The amount of water flow needed to support this species can be determined through instream flow studies. The need for these studies was discussed at length in both the 1998 North Coast Update and the 2001 periodic Review. To date, these studies have not been completed. Although the CCSD annually monitors steelhead populations within the creeks, these monitoring activities have not provided the data and analyses needed to evaluate the impacts that water withdrawals may be having on the biological productivity and continuance of these sensitive habitat areas.



B. Riparian and Wetland Habitat

The protection of riparian and wetland habitat depends on a reliable and sustainable water supply. San Simeon and Santa Rosa Creeks support rare and important species such as Tidewater Goby, Southwestern pond turtle, and California Red Legged Frog. Both of these streams form at least a seasonal lagoon/wetland area in the late spring season. As discussed previously, the heightened levels of water withdrawals needed to serve the “pipeline projects” may deplete surface and groundwater flows. Inconsistent with ESHA and Watershed Policies, new development may reduce the sustainable level and quality of water flowing in these coastal creeks and in turn may have adverse impacts to sensitive riparian and wetland habitat. Again, the amount of water flow needed to support lagoon habitats and the sensitive species that rely on these habitats needs to be determined through instream flow studies that have yet to be completed.

As previously described in the Public Services finding, the project approval is conditioned to include a special retrofitting condition to offset any additional water demands. Only with this condition, can the Commission find the project consistent with LCP Public ESHA protection policies related to groundwater basins, streams, and wetland resources.

Monterey Pine Forest

As previously described, the subject parcel is located within a much larger contiguous indigenous Monterey Pine forest. Thorough application of LCP ESHA protection policies in this area is essential to ensure the biological continuance of the forest habitat. This is especially critical given the threats to the forest posed by the Pitch canker epidemic as well as by the pace and quantity of development taking place in portions of the Monterey pine forest habitat within Cambria.

A. Status of the Pine Resource¹

Along the Pacific Coast, isolated groves of several different pine species (Monterey pine, Bishop pine, Santa Rosa Island pine, Torrey pine) provide some of the most interesting and scenic landscapes, as well as significant terrestrial habitat, in the coastal zone. These isolated endemic occurrences are termed maritime closed-cone forests. The closed-cone characteristic is typical for fire-influenced forest habitats. On a very hot day (rare in these foggy locales) or in response to fire, the cones open and release their

¹ Sources for some of the information in this section include: *Monterey Pine Forest Conservation Strategy Report*, Jones & Stokes Associates, Inc., prepared for the California Department of Fish and Game, December 1996; *Monterey Pine Forest Ecological Assessment: Historical Distribution, Ecology, and Current Status of Monterey Pine*, Jones & Stokes Associates, Inc., prepared for the California Department of Fish and Game, September 12, 1994; *Pitch Canker in California*, Andrew J. Storer, Thomas R. Gordon, David L. Wood, and Paul L. Dallara (from the Pitch Canker Task Force Web Site April 1999); *Current Status of Pitch Canker Disease in California*, CDF Tree Notes #20, July 1995; *California Forestry Note #110*, CDF, November 1995; *Pitch Canker Action Plan, Appendix D to SLO County North Coast Area Plan public hearing document*, December 1996; *Pine Pitch Canker Task Force Position Paper*, California Forest Pest Council, January 23, 1997; *RFP for “Developing Programs for Handling...Infected Pine Material within the Coastal Pitch Canker Zone...”*, CDF, December 1997; *The Cambria Forest*, Taylor Coffman, Coastal Heritage Press, 1995; *Pebble Beach Lot Program Final Environmental Impact Report*, EIP Associates, June 1997; and *In situ Genetic Conservation of Monterey Pine (Pinus radiata D. Don): Information and Recommendations*. D.L. Rogers. Report No. 26, Genetic Resources Conservation Program, University of California, Davis, September 2002.



seed. Following a light ground fire, a virtual carpet of seedlings can be found beneath the old tree, after winter rains. Reproduction is most vigorous in recently burned areas, and weakest in the areas that receive the greatest fire-suppression efforts (i.e., the areas that have been divided and developed with residential estates). In a well-manicured yard, pine reproduction is essentially absent.

Within its native range, only five populations of Monterey pine remain in the world: the main native stand mantling the Monterey Peninsula; the small stand near Año Nuevo in Santa Cruz County; the Cambria stand in North San Luis Obispo County, parts of which are the least disrupted of the remaining groves; and stands on two remote Mexican islands, Guadalupe and Cedros, off the coast of Baja, California. The Guadalupe Island population's survival is uncertain, with no natural regeneration for decades – the result of overgrazing by introduced goats. The three remaining California stands, in contrast, are primarily threatened by habitat loss (e.g., housing and resort development, golf course development, urbanization), continued fragmentation of the remaining intact forest (by roads and other development), soil compaction and erosion (road grading, recreational overuse), genetic contamination by planted non-local Monterey pines, and invasive exotic plants (genista or “broom”, pampas grass, acacia, eucalyptus, etc.). Commercial logging was an issue in the past, but today is largely confined to firewood cutters and small salvage operations. Yet the footprint of large historical logging operations remains, as many of the largest and healthiest trees having been removed, leaving the smaller or less fit trees to contribute disproportionately to the subsequent pine generations.

A more recent concern for the health and viability of the native Monterey pine forest comes from the threat of an introduced pathogen, *Fusarium circinatum*, which causes pitch canker. According to the California Department of Forestry (CDF), pine pitch canker is a rapidly spreading fungal disease of pine trees and Douglas fir, which infects trees primarily through insect wounds in the bark; Monterey and Bishop pines are especially susceptible. CDF also believes that the fungal spores are unintentionally carried over long distances by conveyance of contaminated materials. In addition to transport of contaminated materials by humans, typical vectors for the pathogen include bark beetles and other insects. All three of California's native stands of Monterey pines have now become infected; according to recent assessments, the fungus (or at least the pitch canker disease) does not appear to be on the island stands in Mexico.

Pitch canker was confirmed on the Monterey Peninsula at the Pebble Beach firehouse in April 1992, and then at the Año Nuevo stand in December 1992, followed by the Cambrian stand in November 1994. CDF currently characterizes the threat to all native Monterey pine stands in California as “severe.” On June 4, 1997 the State Board of Forestry defined a Pitch Canker Zone of Infestation, which includes all of the coastal counties extending from Mendocino to the Mexico border. While one goal for the Zone is to slow disease spread, neither the State Board of Forestry nor CDF has the authority to impose and enforce a quarantine on the movement of infected material.

The California Pitch Canker Task Force, CDF, the USDA Forest Service, and Forest Genetics Institute have expressed concern that not only other maritime pines, but also other native pines in the Coast Range, Cascade Range, and the Sierra Nevada may become diseased. The fungal disease was confirmed on a Bishop pine in Mendocino County in November of 1992 and has since been confirmed on Monterey pine in Ukiah (in Mendocino County) and Santa Rosa (Sonoma County). While redwoods have shown resistance in greenhouse tests, Torrey pine (from San Diego County), Ponderosa pine and even Douglas fir



alarmingly demonstrated susceptibility in these tests. Certain genotypes of other more widely distributed tree species are also threatened by the fungal pathogen. For example the limited coastal populations of ponderosa pine, knobcone pine and Douglas-fir in Santa Cruz County are at risk due to their close proximity to infected off-site plantings of Monterey pine.²

No cure for infected trees is currently available. Most estimates describe a mortality rate of up to 85%. Many thousands of trees are already dead. It is important to limit the spread of the fungus until an effective means to deal with it is discovered and disease-resistant stock can be made available. A small percentage of Monterey pine appears immune to the disease. However, of the causative species fungus (*Fusarium subglutinans* f. *ssp. pini*), only 7 strains are currently present in California; one of these strains or vegetative compatibility groups consists of over 50% of the California population of the pathogen. Individual tree specimens, which exhibit resistance to the one overwhelmingly prevalent strain, might prove vulnerable to yet other strains that may become more widespread someday. As a result, the development of a one or only a few lineages of disease resistant stock is not likely to be sufficient to ward off the pitch canker threat.

Because the native range for Monterey pine is limited only to the Cambrian stand and four other isolated places on the globe, the main hope for the survival of the Monterey pine worldwide is that there will be enough natural diversity within the native stands so that at least some trees will have genetic disease resistance or tolerance, that these trees can be used to propagate new trees for urban repopulation, and that larger tracts of native pine forest can be preserved and managed so that natural regeneration can take place to repopulate native pine forest habitat. As such, the native pine stands in the Cambria area represent both a global resource for forest management for this sensitive species. Furthermore, each of the five remaining populations of Monterey pine are distinctive: effective conservation of the diversity within the species requires that each population – including those stands in the Cambria area – be protected.

Indeed, until the nature of existing native pine forest immunity is understood, it is critical that the maximum genetic diversity within the native stands of Monterey pine be protected. CDF concludes:

The restricted native ranges of Monterey pine, Torrey pine, and Bishop pine heightens concern for the effect of pitch canker on these populations. Monterey pine is the most widely planted timber species in the world, and California's native populations represent a global resource for breeding programs. Pitch canker has the potential to reduce the genetic diversity of these species and the integrity of their native stands.

A recent and comprehensive report on genetic conservation of Monterey pine provides 18 recommendations towards conservation of the genetic diversity of this species. Two of these recommendations are that further significant losses of genetic diversity within each of the populations of

² Although Monterey pine is by far the most commonly infected species, the pathogen has also been isolated from Aleppo pine, Bishop pine, Italian stone pine, Canary Island pine, Coulter pine, ponderosa pine, Digger pine, knobcone pine, shore pine, Torrey pine and Douglas-fir. The most recent new host records of the pathogen are all from planted trees in Santa Cruz County: shore pine at Sunset State Beach, Torrey pine at Seacliff State Beach, Digger pine in central Santa Cruz County, and knobcone pine and Douglas-fir in southern Santa Cruz County. Pitch canker has also been isolated from Aleppo pine Christmas trees in San Diego County, which was the first record of pitch canker in southern California on a tree species other than Monterey pine.



Monterey pine should be avoided, and further fragmentation of remaining Monterey pine forests should be avoided.

Finally, because of the various threats to the species, native Monterey pine has been listed as a Federal Species of Concern and a California Native Plant Society List 1B species (“Plants Rare, Threatened, or Endangered in California and elsewhere”); List 1B species are specifically eligible for state listing. Although temporarily withdrawn in December 1999 to allow CDFG to respond to the volume of information submitted, the California Native Plant Society submitted a petition in August 1999 to list Monterey pine as a Threatened Species under the California Endangered Species Act. As described above, native Monterey pine forest is defined as ESHA in the certified LCP.

B. Implementing LCP Policies for ESHA

ESHA Policy 1, Terrestrial Environments Policy 27, and CZLUO Section 23.07.170 require that new development within ESHA shall be limited to those uses that are dependant upon the resource. The proposed development includes a single-family dwelling, a driveway, barn, and guesthouse. A single-family residence and residential accessory uses are not uses dependant upon the Monterey pine forest. The entire area of the applicant's 4.7-acre parcel is an environmentally sensitive Monterey pine forest terrestrial habitat. In this case, the LCP would prohibit such development in this location. However, not allowing a single-family residence or residential accessory structures (principally permitted uses in the Residential Suburban land use category) could potentially constitute a taking under the 5th Amendment of the US Constitution. As such, the County found a single-family residence, guesthouse, and detached garage/workshop to be a “reasonable use of the land,” and approved the project.

The recently modified project will result in a permanent loss of approximately 12,458 square feet of environmentally sensitive habitat and fragmentation of the pine forest. The vast majority of these disturbed areas will be covered with impermeable surfaces. Additional disruptions will result from residential development and subsequent use of the site, but these uses are generally amenable to native plant restoration and maintenance measures. Such activities may include: installation of a storm drain system, utility trenching and, over the long run, ordinary residential activities on the premises such as allowing pets and people in the habitat area. The Applicant has also included a barn/workshop in the project plans. One can presume that such activities will include the use of equipment, machinery etc., resulting noise and other disturbances. None of these development activities are of a type that is dependent on a location within the sensitive resource area, and it is reasonable to expect that these development activities, individually and collectively, will result in a significant disruption of the environmentally sensitive forest habitat area on site. Therefore, this project cannot be found consistent with San Luis Obispo County’s LCP ESHA Policy 1, Terrestrial Environments Policy 27, and CZLUO Section 23.07.170.

However, LCP ESHA policies must be applied in the context of Coastal Act Section 30010. This section provides that the Commission is not authorized . . . to exercise [its] power to grant or deny a permit in a manner which will take or damage private property for public use, without payment of just compensation. Thus, if strict interpretation of the restrictions in the San Luis Obispo County LCP’s resource protection



policies would cause a taking of property, the section must not be so applied and instead must be implemented in a manner that will avoid this result.

Once an applicant has obtained a final and authoritative decision from a public agency, and a taking claim is “ripe” for review, a court is in a position to determine whether the permit decision constitutes a taking. The court first must determine whether the permit decision constitutes a categorical or “per se” taking under *Lucas v. South Carolina Coastal Council* (1992) 505 U. S. 1005. According to *Lucas*, if a permit decision denies all economically viable use of property by rendering it “valueless,” the decision constitutes a taking unless the denial of all economic use was permitted by a “background principle” of state real property law. Background principles are those state law rules that inhere in the title to the property sought to be developed and that would preclude the proposed use, such as the common law nuisance doctrine.

Second, if the permit decision does not constitute a taking under *Lucas*, a court may consider whether the permit decision would constitute a taking under the ad hoc inquiry stated in cases such as *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 123-125. This inquiry generally requires an examination into factors such as the character of the government action, its economic impact, and its interference with reasonable, investment-backed expectations. The absence of reasonable, investment-backed expectations is a complete defense to a taking claim under the ad hoc inquiry (e.g., *Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1005, 1008-1009), in addition to any background principles of property law identified in *Lucas* that would allow prohibition of the proposed use.

Because permit decisions rarely render property “valueless,” courts seldom find that permit decisions constitute takings under the *Lucas* criteria. For the reasons that follow, however, the Commission finds that there is sufficient evidence that a court might find that the denial of some non-resource dependent use on this property would constitute a taking under the ad hoc takings analysis, and therefore, a reasonable amount of development must be allowed, notwithstanding the fact that the LCP prohibits non-resource dependant uses here.

In this situation, the Lodge Hill area has already been subdivided into residential lots, and has over the years been partially developed. Residences are located directly adjacent to the project site, and other residences are in the immediate vicinity. Additionally, it has been determined that the applicant purchased the property on August 4, 1987 at fair market value. The parcel is designated for residential use in the San Luis Obispo County LCP. Also, the parcel is located adjacent to Burton Ave at the intersection of Kay Avenue, among other residential properties that have been developed with houses of a similar size to that proposed in this application, and where public utility service is currently available. The applicant’s geological hazard report notes that no hazardous conditions exist on the site, and there is no evidence that residential use constitutes a nuisance. As noted above, a substantial number of parcels in the Lodge Hill area are already developed, and have been for some time.

As a further basis of an expectation of residential use, the Commission has approved other homes in this area. One example is a fairly recent residential project on a large forested lot in Lodge Hill (Seaberg, Coastal Development Permit No. A-3-SLO-00-78 and A-3-SLO-00-079). That approval was for a



residential development on a large parcel of approximately 2.5 acres, with a greatly reduced building envelope totaling 10,000 square feet (about 9% of the parcel).

After reviewing these factors (zoning, existence of similar homes approved by both the County and the Commission), the Commission finds that an applicant would have had reasonable basis for expecting that the Commission might approve a residential use of the property, subject to conditions that would mitigate to the maximum extent, and where feasible avoid, the adverse impacts that likely would result from development in this sensitive resource area.

Finally, the applicants have submitted detailed information to demonstrate that their expectations were backed by substantial investments. The property was purchased for fair market value for residential property in this area at the time of purchase, and, like other property in the area, has increased in value over the years. Since this purchase, the property has generated no income in the form of rent, and has been taxed based on its current zoning designation as residential land. Accordingly, the Commission finds that the applicants had an investment-backed expectation that this property could be used for residential use, although the purchase price does not guarantee any particular size of development and is only one factor in the overall analysis.

In view of the findings that (1) none of the resource dependent uses provided for in the LCP would provide an economic use, (2) residential use of the property would provide an economic use, and (3) the applicants had a reasonable investment backed expectation that such a properly mitigated residential use would be allowed on their property, there is a reasonable possibility that a court might determine that the final denial of a residential use based on the inconsistency of this use with the San Luis Obispo County LCP could constitute a taking. Therefore, consistent with Coastal Act Section 30010 and the Constitutions of California and the United States, the Commission determines that implementation of ESHA Policy 1, Terrestrial Environments Policy 27, and CZLUO Section 23.07.170 in a manner that would permanently prohibit residential use of the subject property is not authorized in this case.

While the applicants in this instance may have reasonably anticipated that residential use of the subject property might be allowed, the County LCP and Coastal Act also provided notice that such residential use would be contingent on the implementation of mitigation measures necessary to minimize the impacts of development on environmentally sensitive habitat. Thus, the Commission must still comply with the requirements of the LCP the maximum extent feasible by protecting against the significant disruption of habitat values at the site, and avoiding impacts that would degrade these values, to the extent that this can be done consistent with the direction to avoid a taking of property.

C. Impacts to the Pine Resource

The project is located in the Monterey pine forest Terrestrial Habitat ESHA. Policy 1 for ESHA and CZLUO Section 23.07.170(d) prohibit development from significantly disrupting environmentally sensitive habitats, and CZLUO Section 23.07.164 requires that any proposed clearing of trees or other features be the minimum necessary to achieve safe and convenient access without creating significant adverse effects on the identified sensitive resource. In addition, ESHA Policy 27 calls for the preservation of sensitive terrestrial habitats such as the Monterey pine forest by protecting the entire



ecological community. The ordinances implementing these policies (CZLUO Section 23.07.176 and NCAP Monterey Pine Preservation SRA Policy) require that new development minimize disruption of the habitat. Policies 28 and 33 for ESHA emphasize the preservation and protection of rare and endangered species of terrestrial plants and animals.

The San Luis Obispo County LCP does not allow non-resource dependent development within ESHA (ESHA Policy 1, Terrestrial Environments Policy 27, and CZLUO Section 23.07.170). Residential development within the proposed location would not be dependent on the resource and does not meet any of the other LCP Policy dependant development tests. Moreover, residential development here would “significantly disrupt the resource” and does not support the “biological continuance” of the habitat, inconsistent with LCP Policies 1 & 2.

As approved by the County, the project would permanently remove approximately 34,000 square feet of habitat from the pine forest. As recently modified, approximately 12,458 square feet of the property would be disturbed. The residential development and related driveway are located in a dense stand of mixed Monterey pine and Coast live oak forest habitat. The new project would remove twenty (20) pine trees compared to forty-two (42) and fifteen oaks compared to fifty-eight (58) as previously approved by the County. While much improved in terms of tree removal statistics, this new project remains inconsistent with the LCP’s Terrestrial Habitat and Monterey pine forest protection policies.

Impacts to the pine forest go far beyond simply removing trees. Fragmentation of the forest habitat can also cause significant adverse impacts to the biological continuance of the habitat. In terms of Monterey pine forest habitat, there is a noticeable distinction between the Strawberry Canyon area (the area of this project proposal) and the extensive residential area of nearby West Lodge Hill. Although the majority of both areas are mapped as Terrestrial habitat for the protection of Monterey pine trees, the continuity of forest in the project area (and on this parcel in particular) is much greater than in other neighborhoods of Cambria due to the parcel’s size, configuration, and adjacency to other open space areas. Development of small lots (approximately 3,500 square feet – typically composed of two 25’ x 70’ lots) within portions of West Lodge Hill occurs within relatively compact neighborhoods, within forested area that have been previously fragmented by existing development. In comparison, the proposed development is located on a private holding of 4.7 acres, and will encroach within previously undisturbed sections of forest that play a critical role in maintain the health and biological productivity of the forest system.

For example, the design and location of the proposed driveway will have adverse impacts to ESHA. The driveway would appropriately use an existing dirt road to access the site from Burton Drive, but then deviates from the existing dirt road alignment approximately 60 feet in from the street. The revised site plans show the driveway to be 12 feet wide. In previous conversations with the project representative, it was explained to Staff that a 16-foot wide driveway was necessary due to requirements described in the Fire Plan Review. However, a close review of the Fire Plan Review indicates that the increased width of the driveway is only required when the length of the driveway is 200 feet or greater. As revised, the driveway as proposed is approximately 140 feet. This is a significant reduction (approx. 310 feet less) in overall length and width and therefore reduces the amount of site disturbance greatly.

The existing parcel configuration allows one residence as a principally permitted use on the 4.5- acre



parcel. One secondary dwelling and a workshop/barn could be allowed as conditional uses if consistent with other applicable LCP requirements. The Applicant proposes to include a 600 square foot guesthouse and 1,500 square foot garage/workshop. These residential accessory structures will impact the habitat area by creating additional losses to ESHA, increase the amount of impervious surfaces added the sensitive site, and increase ground disturbing activities, thereby resulting in further fragmentation and adverse impacts to the forest. The LCP limits workshops to 40 percent of the floor area of the principal structure. In this case, the ordinance would allow an approximately 1,220 square foot workshop (Dwelling = 3,052 s.f. X 40% = 1,220 s.f.). In addition, the ordinance specifies that when workshops are combined with garages, the total square footage is limited to 1,000 square feet (CZLUO Section 23.08.032g(2) and CZLUO Section 23.08.032(c)). The County approved project makes an exception to these ordinances. In the staff report submitted, the County states that when workshops are combined with garages (as is the case here), they have historically allowed combined structures to be larger in an effort to reduce the number of structures on a given site and reduce environmental disturbance associated with the construction of multiple structures and driveways. In this case, the county approved project allows a 2,400 square foot garage workshop (1,400 square feet greater than the LCP allowable size).

With respect to the proposed guesthouse, CZLUO Section 23.08.032(e) requires that guesthouses be located no further than 50 feet from the principal residence. Inconsistent with the LCP, the County approved project plans show the guesthouse to be approximately 85 feet from the residence. The result is a loosely clustered residential compound with excessive site disturbance area. An alternative that is more protective of the resource is to reduce the size of the workshop/barn consistent with the LCP, and locate the guesthouse closer to the principal residence. This can be accomplished with minimal site disturbance and tree removal. In this case, it appears that the County's approval accommodates the desired development to the detriment of the resource when feasible alternatives exist, inconsistent with LCP policies and ordinances.

Following staff's concerns expressed with respect to the siting, design and scale of these accessory structures, the Applicant has revised the project site plan to site the guesthouse closer than 50 feet to the primary structure, consistent with the LCP. The size of the garage/workshop has also been reduced, but remains 500 square feet larger than allowed under the CZLUO Section 23.08.032(g)2 and Section 23.08.032(c). A reduction in the size of the barn/workshop is therefore needed to comply with these LCP standards.

More fundamentally, though, it is not clear that the proposed guest house and large workshop -- both conditional uses -- are reasonable expectations in light of the clear LCP policies requiring the avoidance of impacts to Monterey Pine ESHA. Eliminating these uses from the site plan would further reduce the building envelope and associated impacts to ESHA. On the other hand, the Applicant's revised project now includes the voluntary merger of four legal parcels owned by the Applicant. Previously, the applicant had not included two of the parcels in the project/site design. This merger would retire at least one lot that would be eligible for future development in the event that additional water resources become available.

In addition, residential development brings with it fire suppression concerns and requirements (such as defensible clear space around the house), resulting in the possibility of heightened tree removal and



ground disturbance. It seems likely that these fire suppression concerns and/or requirements could lead to future removal of indigenous Monterey pine forest at this site. Furthermore, as described above, prescribed and natural burns within such Monterey pine forests can be extremely important for the continued vitality of the forest resource. Residential development within and adjacent to the forest resource presents a conflict with pursuing such management techniques due to concerns for residential structures.

The LCP recognizes the indigenous Monterey pine forest here as ESHA. Although individual native pine trees are important to protect, individual specimens need to be understood within the ecological context that makes up their habitat. Thus, Monterey pine forest needs to be understood as a complete and dynamic habitat – understory and overstory, animals and interactions, soils and climates. At issue is preservation of habitat, not simply mitigation of individual tree impacts.

D. Monterey Pine Conclusion

The subject development is sited within indigenous Monterey pine forest habitat that is defined as ESHA by the LCP. As described in the Preliminary Biological Assessment, all of the property contains high quality Monterey pine forest with individuals in all life stages. The property is described as being contiguous with the large tract of remaining undeveloped Monterey pine forest south of the residential area of Lodge Hill with the ability to support rare and sensitive plant and animal species. A recent site visit by staff observed a variety of plant species with Monterey pine seedlings scattered throughout the entire site.

The proposed residence is not dependent on siting within the ESHA and would significantly disrupt the continuation of the habitat values within the ESHA contrary to the LCP. As such, the Commission finds that the project, as proposed, is not consistent with LCP ESHA policies protecting the native Monterey pine forest habitat at this site.

4. ESHA Conclusion and Parameters for Project Modification

LCP ESHA policies are generally quite similar to Coastal Act Section 30240 and require that ESHA be avoided and that development not significantly disrupt ongoing ESHA resources. In this case, the proposed project site is comprised entirely of native Monterey pine forest ESHA. The project as proposed would be placed within Monterey pine forest ESHA (for the residential compound), and would bring increased traffic, noise, lights, and residential activities into forest to the further detriment of habitat and migratory corridors for animal species. As such, the Commission finds that the project, as proposed, is not consistent with the LCP's ESHA policies cited in this finding.

In order to maximize protection of the Monterey pine forest habitat, the project must be modified. Because the site is all ESHA, the best use for the subject property is probably as an open space habitat area managed to preserve environmentally sensitive habitat areas. This would be the most consistent use for development within LCP-defined Terrestrial Habitat. If, however, a residence must be entertained at this location in light of constitutional takings considerations, it must be sited and designed consistent with LCP ESHA protection provisions to the maximum extent feasible, and must be the least environmentally damaging alternative available to accommodate a reasonable economic use.



In sum, to maximize protection of the Monterey pine forest habitat in light of constitutional takings issues, the project must be reduced in scope from that proposed, and redesigned as necessary to minimize disruption to sensitive habitat that would accompany any development of this property.

C. Project Modifications to Result in an Approvable Project

The proposed project would place a large residential compound on the parcel to the detriment of ESHA resources protected by the LCP. The project raises significant issues with respect to the proposed project's conformance with the LCP's ESHA policies; all of these issues are exacerbated by their potential for cumulative impacts in the future. Project modifications are necessary if a project is to be approved at this location.

There are certain project modifications necessary within each issue area for the project to be found consistent with the LCP. First, increased water withdrawals needed to serve the development is not environmentally sustainable and cannot be found consistent with the LCP. Therefore, Special Condition 2 requires a retrofitting condition to offset the increase water demand. (See discussion in Public Services section of this report).

An approvable project must also maximize protection of sensitive habitat areas, must completely mitigate all adverse habitat impacts, and must be deemed the least environmentally damaging alternative. The Project must limit direct impacts to ESHA, including tree removal, fragmentation of habitat, limit removal of native materials, avoid excessive ground disturbance, must avoid erosion and sedimentation, and must prohibit landscaping with exotics. An approvable project must also provide for a deed restriction over the portion of the site left undisturbed by the approvable project.

1. Potential Residential Siting Options

Unfortunately, in light of the significant constraints present over the subject property, the best choice for siting a residential is not obvious. Each potential location has environmental costs and benefits that must be weighed. To avoid Monterey pine forest fragmentation, a site on the southern portion of the property is preferred, as this will allow utilization of the existing dirt road and limit the need for the driveway to bisect the property. This would result in larger contiguous forest areas and supports the foraging movements and wildlife patterns essential to a healthy forest. Conversely, the steeper southern portions of the site require development to cut through slopes and further alter natural landforms. The steeper portions of the site are also subject to heightened runoff and erosion, impacting nearby drainages.

Because of the resource constraints, the siting challenge is to find the portions of the site that would have the least impacts to ESHA. Staff evaluated two basic siting areas that could potentially meet this criteria:

- (1) The southeastern corner of the site adjacent to the existing dirt road and street frontage. This area would avoid the central portions of the site, would avoid an interior driveway on habitat and avoid bisecting any habitat corridors. The existing dirt road could be used in this location. Because this location is closer to the street and closer to existing drainages, implementation of erosion, drainage, and sedimentation control requirements would be more feasible. It also appears that there is a



clearing in this location that would result in fewer Monterey pine trees to be removed. This site, however, would be located on steeper slopes.

- (2) The southern property boundary of the site directly across from the proposed residence. This area would avoid an interior driveway on habitat, would avoid bisecting any habitat corridors, and would locate the residence closer to trails already subject to human activity. However, this site would involve a longer driveway approach, would bring the residential use within close proximity to adjacent open space preserves, and would bring residential activities and issues (for example, fire safety and management) closer to the riparian corridor and stream south of this location that serves as an important drainage for the watershed.

At the de novo hearing February 2003, the applicant presented to the Commission a modified project for review and approval. The modified project includes many of the original recommendations proposed by Commission staff, including a significantly lower overall site disturbance area, as well as other changes. The modified project includes an overall shift of the development envelope towards the southeast corner of the property boundary. Another significant change in the project currently proposed by the Applicant is the inclusion of two additional fronting parcels to support the new site arrangement. The revised project plans show the proposed barn/workshop located closer to the street and straddling these newly included fronting lots. While the Commission recognized these changes as improvements over previous submittals, staff was directed to work with the Applicant on the details of this modified project.

Considering the various factors, if a residence must be considered in deference to constitutional rights of private property owners, an appropriate location to pursue residential development on the subject site is within the modified development envelope recently proposed by the Applicant, and shown in Exhibit F of this report. Although the site is located within the native pine forest, placing a residence here will limit residential activities associated with the house to an area that is closer to the fronting street and will require less site disturbance. This area is located on the southern half of the property, which will allow larger undisturbed contiguous forest areas to the west and north. In addition, this location allows for the use of the existing dirt road with minor improvements. Finally, the residence in this location will result in fewer trees to be removed as well as a reduced development envelope (7 fewer Monterey pines removed, 27 fewer Coast live oaks removed, and a 86% reduction in the number of trees to be impacted (5 compared to 36 previous)). Overall, the current proposal reduces the amount of site disturbance, clusters structures closer together, moves the development closer to fronting streets, removes fewer trees, reduces the length and width of the driveway, and generally results in less fragmentation to the forest habitat. See Exhibit F for revised project plans.

2. Other Project Modifications

Even with the modified forest site location, the proposed residence at this location would result in a number of adverse impacts that must be avoided and/or mitigated including the loss of forest habitat for the house placement, the loss of surface soils and understory due to the driveway placement, the potential for increased noise and light disturbance from increased use of the driveway, the potential for disturbance to biological resources from human activity and typical residential activities on the site, and impacts to sensitive habitat during construction.



To address these impacts, the following project modifications are necessary:

A. Residential Accessory Structures

In order to find the project consistent with LCP residential accessory use requirements (CZLUO Section 23.08.032), the size of the barn/workshop must be modified. Special Condition 1 of this permit limits the size of the workshop/barn to not exceed 1,000 square feet. To maximize ESHA protection, the accessory structures have been clustered within a reduced building envelope that has been re-sited to minimize habitat fragmentation.

B. Driveway and Road Improvements

The new driveway from the existing roadway to the house site must use the existing dirt road adjacent to the southern property line to avoid additional grading and site disturbance as much as is feasible. Such a driveway would still be placed in an area deemed ESHA, and must therefore be designed to avoid and minimize adverse impacts to the greatest degree feasible. Towards this end, the project biologist, in a letter dated 1/29/03, suggested the use of pervious surfacing as a way to minimize impacts of habitat fragmentation (See Exhibit E). Accordingly, the Special Conditions of this permit require that the driveway be constructed entirely of pervious materials, unless evidence is provided that impervious surfacing is required in particular areas to avoid erosion and sedimentation. The area of disturbance required to accommodate the driveway must be minimized and adjacent roadway areas shall incorporate adequate measures to capture, direct, and treat road runoff to avoid sediment and pollutant loading of nearby drainages (See Special Condition 1).

C. Tree Replacement and Landscaping

Special Conditions 3, 4, and 5 of this permit place requirements on the removal and handling of Monterey Pine tree material, and future proposals for on-site landscaping. Furthermore, County Conditions 5, 6, 7, 9, 10, 11, and 12, incorporated as Special conditions of this coastal development permit by reference, address tree replacement, maintenance, and monitoring, which assure that the required mitigation for tree removal will be successful.

D. Construction

Special Condition 6 of this permit is necessary to protect forest habitat during construction. All construction areas shall be delineated with fencing and kept to the absolute minimum necessary (i.e., to construct the driveway, and the residential compound) to minimize disturbance of forest habitat. To the extent feasible, previously disturbed off-site areas shall be used for storage and staging of equipment and materials to minimize the habitat area disruption on the subject site. In addition, the drainage plan required by this condition shall identify the specific type, design, and location of all drainage infrastructure necessary to ensure that post construction drainage from the project does not result in erosion, sedimentation, or the degradation of coastal water quality. Furthermore, County Conditions of Approval # 17, 18, and 19, incorporated as Special conditions of this coastal development permit by reference, requires the applicant to submit a drainage, sedimentation, and erosion control plan to address surface flow and provisions for minimizing erosion on the property. All trees to be retained on the site



shall be protected during construction. Erosion control BMP's are required. (See Special Condition 6).

E. Lot Merger

Special Condition 9 requires the Applicant to record a voluntary lot merger for parcels 024-202-014, 024-202-023, 024-202-024, and 013-141-002. As discussed above, merging the lots into one larger parcel within the Monterey Pine forest serves to further protect this sensitive habitat, consistent with Policy 4 for ESHA and CZLUO Section 23.07.170 c.

F. Open Space Preservation and Deed Restriction

Special Conditions 7 and 8 require the applicant to permanently limit development on all areas of the merged parcels outside of the approved building envelope to revegetation that will enhance the habitat values of the Monterey pine forest, and to fuel modification activities conducted to the minimum extent necessary to meet Cambria Fire Department requirements. This will minimize the impacts associated with the introduction of the residential uses in this previously undisturbed section of forest, and will avoid future encroachments or intrusions that would be incompatible with the biological continuance of the surrounding sensitive habitat. Permanent preservation of the forest habitats remaining on the site is necessary to maximize the project's consistency with the ESHA protection policies of the LCP cited above.

3. Approvable Project Conclusion

By modifying the project in these ways, the Commission can find that the project is the least environmentally damaging alternative in light of the legal requirement to ensure a reasonable economic use consistent with constitutional takings law, and that adverse habitat impacts are appropriately mitigated; all findings required under the LCP. The approved project will allow a smaller residential use, more in scale with the surrounding Cambria Monterey pine forest of which it is a part. Overall, forest fragmentation is minimized.

As such, and only as conditioned in this approval, the Commission can approve the modified project consistent to the greatest extent feasible with the certified San Luis Obispo County LCP.

D. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding must be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary



of Resources as being the functional equivalent of environmental review under CEQA. This staff report has analyzed the environmental impacts posed by the project and identified changes to the project that are necessary to avoid and reduce such impacts. Based on these findings, which are incorporated by reference as if set forth herein in full, the Commission finds that the project will have a significant adverse impact on the environment, due to the resultant loss of Environmentally Sensitive Habitat Areas. These impacts cannot be avoided because requiring complete protection of the habitat would result in a taking of private property. Therefore, as approved by the Commission there are no feasible alternatives or mitigation measure to further reduce environmental effects.

